

NOT FOR CITATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

No. C 05-756 PJH

v.

**ORDER DENYING EX PARTE REQUEST
FOR SUBPOENAS;
FURTHER INSTRUCTIONS**

ROSALYN TILLERY,

Defendant.

On January 20, 2006, the court received defendant's ex parte requests for subpoenas under Federal Criminal Rule 17(b) and 17(c). Defendant's request is denied without prejudice for the following reasons.

First, defendant has not made a sufficient showing for filing under seal. Second, defendant has not made an adequate showing that she qualifies as indigent pursuant to Rule 17(b). Rule 17(b) requires an adequate basis for finding that defendant is unable to pay since she has retained counsel. At a minimum, defendant is required to appear before the duty magistrate judge and fill out a financial affidavit in order for the magistrate judge to determine defendant's ability to pay.

Third, defendant has not made a sufficient showing that she is entitled to proceed with the instant 17(c) request ex parte. An indigent defendant may seek a document

1 subpoena ex parte pursuant to Rule 17(c) provided that the defendant can show that to
2 proceed otherwise, ie, by noticed motion, would reveal the defendant's trial strategy. See
3 *United States v. Tomison*, 969 F.Supp. 587, 595 (E.D. Cal. 1997); *United States v. Daniels*,
4 95 F.Supp.2d 1160, 1162-63 (D.Kan. 2000). As noted by the *Tomison* court, this can be a
5 difficult to showing to make. *Tomison*, 969 F.Supp. at 593-94.

6 Defendant is also referred to review and comply with this court's standing order
7 regarding the issuance of Rule 17(c) subpoenas.

8 Defendant may resubmit the instant request after compliance with the above
9 requirements.

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11 Dated: January 25, 2006



PHYLLIS J. HAMILTON
United States District Judge